IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

CRP.No. 855 of 2006(F)

(ORDER IN I.A.NO.128/06 IN O.S.749/02 ON THE FILE OF PRL.MUNSIFF'S COURT, KOZHIKODE-II

REVN. PETITIONERS/PETITINERS/PLAINTIFFS & SUPPL PLAINTIFFS 4 TO 9:

1. P.V. ABDUL KHADER,
   S/O.AHAMMADKOYA THANGAL, AAKKITHAZHATH HOUSE,
   KZIHAKKOTH AMSOM, KODUVALLY.

2. C. KAMARUNNISA, D/O.C. SEETHI,
   3/625, WYNAD ROAD, KACHERI AMSOM OF
   KOZHIKODE TALUK REPRESENTED BY THE POWER OF
   ATTORNEY HOLDER C. SEETHI.

3. C. SEETHI, S/O. ABDULKHADER,
   3/625, WYNAD ROAD, KACHERI AMSOM OF
   KOZHKODE TALUK.

4. C. SUHARA D/O.C. SEETHI,
   ELATTIL AMSOM AND DESOM, KOZHIKODE TALUK
   REPRESENTED BY THE POWER OF ATTORNEY HOLDER
   C SALIKATH, D/O.C. SEETHI, KACHERI AMSOM DESOM,
   KOZHIKODE TALUK.

5. C. MARIYAM D/O.C. SEETHI,
   KACHERI AMSOM OF KOZHIKODE TALUK.

6. C. SALIKATH, D/O.C. SEETHI,
   KACHERI AMSOM DESOM, KOZHIKODE TALUK.

7. C. JASMIN, D/O.C. SEETHI,
   KACHERI AMSOM DESOM, KOZHIKODE TALUK.

8. C. HASIM S/O. C. SEETHI,
   KACHERI AMSOM DESOM, KOZHIKODE TALUK.

BY ADV. SMT.T.D.RAJALAKSHMI
ADV. E.R.VENKITESWARAN

RESPONDENTS:/RESPONDENTS/DEFENDANTS:

1. JAM IYYATHU ATHBAYI NAKSHABANDIYA,
   KIZHAKKOTH AMSOM OF KOZHIKODE TALUK.

2. P.V. SHAHUL HAMEED, S/O. SYED HASSAN
   THANGAL, PUTHENVEETTIL HOUSE, KODUVALLY AMSOM
   OF KOZHIKODE TALUK.

3. B.C. ABDURAHIMAN S/O.AHAMMAD,
MAVULLAKANDIYIL HOUSE,
ELETTIL AMSOM OF KOZHIKODE TALUK.

BY ADV. SRI.P.K.SURESH KUMAR – R1 TO R3

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P.855/06

ORDER ON I.A.3119/06 IN C.R.P.855/06

DISMISSED

18.12.06 SD/-M.SASIDHARAN NAMBIAR, JUDGE.

M.SASIDHARAN NAMBIAR,J.

C.R.P.NO.855 OF 2006

DATED THIS THE 18th DAY OF DECEMBER, 2006

ORDER

Petitioners are the plaintiffs in O.S.749/02 on the file of Principal Munsiff Court, Kozhikode-II. On the death of second plaintiff, plaintiffs filed I.A.128/06 to implead the legal heirs. Under order dated 20.9.06, learned Munsiff dismissed the application holding that second plaintiff died on 24.9.05 and application to implead the legal heirs was filed only on 11.1.06 and there is no application to set aside the abatement or to condone the delay and therefore the petition is not maintainable. This revision petition is filed challenging that order.

2. Learned Counsel appearing for petitioners and respondents were heard.

3. The fact that second plaintiff died on 24.9.05 is not disputed. The learned counsel appearing for respondents also admitted the position that one of the legal heirs of second plaintiff is already on record. When one of the legal heirs of the deceased is one among the parties in the suit, the suit will not abate for failure to implead the legal heirs within time. Therefore there is no necessity to file either an application to set aside abatement or to file an application

to condone the delay. In such circumstances, the impugned order is illegal and it is set aside. I.A.128/06 stands allowed.

M.SASIDHARAN NAMBIAR,JUDGE

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